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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013 - 895*

13 **TANYA ANGELIQUE PORTER**
1131 Nez Perce Drive
Hollister, CA 95023

A C C U S A T I O N

14 **Registered Nurse License No. 750582**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about May 18, 2009, the Board issued Registered Nurse License Number
23 750582 to Tanya Angelique Porter (Respondent). The Registered Nurse License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on July 31, 2014,
25 unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Section 118, subdivision (b) of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

STATUTORY AND REGULATORY PROVISIONS

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 of the Code provides in relevant part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

..."

8. California Code of Regulations, title 16, section 1443 states: "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

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9. California Code of Regulations, title 16, section 1443.5 states:

“A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

“(1) Formulates a nursing diagnosis through observation of the client’s physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

“(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client’s safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

“(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client’s health needs.

“(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

“(5) Evaluates the effectiveness of the care plan through observation of the client’s physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

“(6) Acts as the client’s advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.”

COSTS

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **FACTUAL BACKGROUND**

4 11. Between July and September 2010, Respondent provided full-time nursing care for a
5 patient (Patient A) at his home in Sunnyvale, California. During the time she cared for Patient A,
6 Respondent had frequent contact with Patient A's father, NM.¹ Approximately two weeks after
7 Respondent began caring for Patient A, Respondent played pool one night with NM after her shift
8 ended.

9 12. On or about June 17, 2010, Patient A's physician made certain orders to be followed
10 by the nurse(s) caring for Patient A. The certification period of these orders was from June 22,
11 2010, to August 20, 2010. The physician's orders provide in pertinent part as follows: "Vital
12 signs including BP and skilled assessment to be done every shift and pm change of condition."

13 13. On the following dates, Respondent failed to assess Patient A's vital signs: July 21,
14 22, 23, 26, 27, and 29, 2010, and August 3, 4, and 5, 2010.

15 14. On or about August 23, 2010, Patient A's physician made additional orders to be
16 followed by the nurse(s) caring for Patient A. The certification period of these orders was from
17 August 21, 2010, to October 19, 2010. The physician's orders provide in pertinent part as
18 follows: "Vital signs including BP and skilled assessment to be done every shift and pm change
19 of condition."

20 15. On the following dates, Respondent failed to assess Patient A's vital signs: September
21 8 and 9, 2010.

22 16. In or around September 2010, Respondent stopped caring for Patient A. Later,
23 Respondent complained to her employer that NM had sexually harassed her during the time
24 Respondent cared for Patient A. Respondent did not report the alleged sexual harassment during
25 the time she cared for Patient A.

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27 ¹ Initials are used herein to protect the patient's and his father's privacy. Their identity
28 will be provided pursuant to a proper discovery request.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 17. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
4 Code for unprofessional conduct in that Respondent met with her patient's father in a social
5 setting and failed to report the alleged sexual harassment committed by the patient's father at the
6 time it occurred. The circumstances of Respondent's conduct are set forth above in Paragraphs
7 11 and 16.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Incompetence)**

10 18. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1) of
11 the Code and California Code of Regulations, title 16, sections 1443 and 1443.5 for incompetence
12 in that she failed to follow a physician's orders by not assessing Patient A's vital signs on certain
13 dates. The circumstances of Respondent's conduct are set forth above in Paragraphs 12 through
14 15.

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16 **DISCIPLINE CONSIDERATIONS**

17 19. To determine the degree of discipline, if any, to be imposed on Respondent,
18 Complainant alleges that on or about August 23, 2008, Respondent submitted a Request for
19 Reapply/Repeat Examination to the Board in which Respondent indicated that she had been
20 convicted of an offense other than a minor traffic violation. In a letter addressed to the Board
21 dated September 11, 2008, Respondent stated that in May 2008, she was charged with a "wet and
22 reckless" for driving under the influence of Vicodin. Respondent's Request for Reapply/Repeat
23 Examination and her letter to the Board dated September 11, 2008, are incorporated by reference
24 as if fully set forth.

25 20. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges that on or about July 1, 2001, in a prior disciplinary action entitled *In the*
27 *Matter of the Accusation Against Tanya Angelique Atencio* before the Board of Vocational
28 Nursing and Psychiatric Technicians (Case Number 6263), Respondent was publicly reprovved for

1 violating section 2878, subdivision (a)(1) of the Code (unprofessional conduct) on the ground that
2 Respondent failed to awaken a patient's husband and inform him of the patient's deteriorating
3 condition. That decision is now final and is incorporated by reference as if fully set forth.

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5 **PRAYER**


6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing the Board of Registered Nursing issue a decision:

8 1. Revoking or suspending Registered Nurse License Number 750582 issued to Tanya
9 Angelique Porter;

10 2. Ordering Tanya Angelique Porter to pay the Board of Registered Nursing the
11 reasonable costs of the investigation and enforcement of this case pursuant to Business and
12 Professions Code section 125.3;

13 3. Taking such other and further action as deemed necessary and proper.
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15 DATED: APRIL 9, 2013


16 LOUISE R. BAILEY, M.ED., RN
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant
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